

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CLARENCE GIVENS,

Plaintiff,

v.

KENNETH LUEDTKE, *et al.*,

Defendants.

ORDER

13-cv-848-wmc

Judgment was entered in this case on May 6, 2014 after the court dismissed plaintiff Clarence Given's claims as being barred by the governing statute of limitations and, alternatively, for failure to state a claim upon which relief could be granted under § 1983. Subsequently, Givens filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), which was denied on June 12, 2014. Givens has now filed a notice of appeal. (Dkt. # 10). Because he has not paid the appellate docketing fee, he presumably requests leave to proceed *in forma pauperis*. That request will be denied.

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that he is indigent and, in addition, that the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith."). Although Givens has been found eligible to proceed as an indigent litigant previously in this case, the court cannot certify that the appeal is taken in good faith. In that respect, the United States Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a plaintiff is appealing claims that have been dismissed as frivolous. *See Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). To the extent that Givens is attempting to

raise on appeal the same legally frivolous claims he raised in his complaint, the court certifies that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3). Accordingly, his request for leave to proceed *in forma pauperis* on appeal must be denied.

ORDER

IT IS ORDERED that:

1. The court CERTIFIES that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3).
2. Plaintiff Clarence Givens's request for leave to proceed *in forma pauperis* is DENIED.
3. Although this court has certified that the appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), plaintiff is advised that he may challenge this finding pursuant to Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, within twenty (20) days of the date of this order.

Entered this 14th day of July, 2014.

BY THE COURT:

/s/
WILLIAM M. CONLEY
District Judge